

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:MSR:ILD:CHI:TL-2468-00  
RAVillageliu ~~TL-N-2468-00~~

date: June 1, 2000

to: Chief, Examination Division, Illinois District  
Case Manager Robert Larson, Group 1202  
Attn: Team Coordinator John Pelican  
Attn: Revenue Agent Nemon Taylor

from: District Counsel, Illinois District

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subject: AO: [REDACTED] (I.R.C. Sec. 7605(b))  
Years : [REDACTED], [REDACTED], [REDACTED] & [REDACTED]<sup>1</sup>

Non-Docketed Large Case Opinion.<sup>2</sup>

Facts

The Service is currently examining the tax returns for [REDACTED] for the taxable years [REDACTED] through [REDACTED], inclusive. During the year [REDACTED], [REDACTED] transferred the [REDACTED] building to a third party. See enclosed Exhibit 2 (pg. 41 of [REDACTED] Annual Report). The Service is reviewing the transfer in depth to determine if the transfer is a sale of the [REDACTED] or simply a refinancing of the debt.

In pursuing the examination, the Service, through IDR's, has asked the taxpayer questions that relate to events or transactions which occurred in the years under examination ([REDACTED], [REDACTED], and [REDACTED]) and also in years subsequent to the current examination cycle ([REDACTED] and [REDACTED]). See enclosed Exhibit 3 (IDR's ## 221, 222, 229 & 230. The information for subsequent years is relevant to the current examination, for the Service to get a

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<sup>1</sup>A copy of the Power of Attorney is enclosed as Exhibit 1.

<sup>2</sup>This opinion has not been reviewed by the national office prior to its being issued. A copy of this opinion is being sent to the national office for coordination purposes. If any modifications or clarifications result, these will be communicated to you orally or by supplemental memorandum, as appropriate. Absent such a communication, you may consider this opinion to be the opinion of this office with respect to the matters which it addresses.

complete picture of whether a true sale or a refinancing occurred.

██████ has represented that it is prepared to provide the information for the ██████ and ██████ years as requested by the IDRs. ██████ has made it clear that providing this information is not a waiving of its rights under Internal Revenue Code Section 7605(b), to only one inspection of its ██████ and ██████ taxable years. See Exhibit 4 (Correspondence to IRS from taxpayer dated ██████).

Given the above, the Examination Division has sought our answer to the issues that follow. Our answers follow the issues.

#### Issues

1. Is the taxpayer waiving (or not waiving) its rights under Section 7605(b) of the Internal Revenue Code of 1986, by providing information relating to years outside of the current audit cycle?

Answer: The taxpayer is not waiving its rights under I.R.C. Sec. 7605(b). However, this is of little consequence to the Service. In our opinion, the Service will not be conducting a second examination of the taxpayer's ██████ and ██████ years in the future, when that Examination cycle actually begins. The fact that information from those future years, relevant to the current cycle, is being used to examine the current cycle does not mean that an examination of the future years is being conducted.

In other words, the Service is only examining the years ██████ through ██████, at this time, not the years ██████ and ██████. The mere fact that the Service has asked and will look at data, books and records from ██████ and ██████, to more fully understand the earlier cycle years, does not constitute the beginning of an examination of the taxable years ██████ and ██████.

In fact, three of the four IDR's explicitly make clear to the taxpayer that the request for information from ██████ and ██████ years does not mean that these years are being examined. This is done by using the following or similar language: "Note that ██████ & ██████ information is requested not to examine those tax years but is requested to assist in understanding and evaluating the income beneficiary's rights." The fact that this message or a similar message is not repeated in every IDR does not change the fact that the taxpayer has been clearly notified that the years ██████ and ██████ are not under examination.

2. Does the request by the IRS for information "outside" of the examination cycle and the response to that request by the taxpayer constitute an examination of tax returns under I.R.C. Section 7605(b) of the Internal Revenue Code of 1986?


Answer: No, as previously stated, the Service has not begun an examination of the taxpayer's [REDACTED] and [REDACTED] years, by the mere fact that it has requested (or may even decide to summons) information from those years, to fully understand the earlier cycle years.

Finally, we note two things. First, as of the present time, the taxpayer has not yet claimed that our request for data for [REDACTED] and [REDACTED] (to use for the years [REDACTED] through [REDACTED] is, in fact, the beginning of an examination of [REDACTED] and [REDACTED]. All that the taxpayer is doing is preserving its rights to so argue, at an appropriate time, if it chooses to do so. In the taxpayer's own words "...by providing this information, the taxpayer is not waiving its right under 7605(b)...". Second, even if a Court could find a second examination, under the scenario envisioned to develop in this case, I.R.C. §7605(b) would not present an insurmountable obstacle. Under the statute, the Service can carry out a second examination by giving the appropriate notification required by the statute.

#### Conclusion

This concludes our legal opinion in this case. We are closing our file. If you have any questions, please contact the undersigned at (312) 886-9225, extension 308.

RICHARD A. WITKOWSKI  
District Counsel

By:   
ROGELIO A. VILLAGEL  
Special Litigation Assistant

Enclosures: as stated.

(Attachments only for CC:DOM:FS)

CC:District Counsel, Illinois District

CC:Associate Regional Counsel (Large Case), MS (Chicago)

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CC:DOM:FS (2 copies with 2 copies of attachments)